

AGREEMENT FORM

Urban Renewal Project: Ash Tree Removal along Sagamore Parkway

This agreement, made this ____ day of _____, 2016 at West Lafayette, Indiana, by and between the **City of West Lafayette Redevelopment Commission** (hereinafter referred to as the "Commission") and **Deaton Enterprises, Inc.** (hereinafter referred to as the "Contractor").

WITNESSETH:

That the condition of the mutual covenants hereinafter set forth, the Commission and the Contractor agree as follows:

Article 1: SCOPE OF WORK

The Contractor shall furnish all labor and tools and equipment and do all things required for complete removal of 98 Ash Trees located along Sagamore Parkway, from Happy Hollow Road ramp west to junction of Sagamore Parkway and Yeager Road. The plans and specifications shall be on file in the office of the City Department of Development. All brush shall be chipped and delivered to West Lafayette Parks Department barn. All other material will be removed from the site.

Article 2: PAYMENT

The Commission shall pay to the Contractor, in full and complete payment, for Contractor's performance of this Contract, in current funds. [The sum of **\$22,500.00 (Twenty-two thousand five hundred dollars and zero cents)** defined as the contract price, and computed from the Contractor's estimate included herein.] The final contract price will be the actual installed quantities of materials multiplied by the corresponding contract unit prices. Variance from the estimated plan quantities will be done by change order for any additions or deletions to the contract as determined by the work and approved by the Commission.

Said contract price shall be paid to the Contractor in installments in the manner provided in, and under conditions of, the Quote for scope of work.

Article 3: CONTRACT DOCUMENTS

The contract documents include this agreement, the Proposal dated July 13, 2016, and the Contractor's certification of insurance, together with plans and any subsequent addenda.

Said documents are hereby incorporated into and made a part of this agreement the same as if herein fully set forth.

Article 4: SEVERANCE

The intent of the parties is that this agreement be deemed complete in the sense that its purpose is to establish one price for the doing of the whole work, and that it be deemed severable in the sense that the voidance of any part or portion shall not void the remainder.

It is understood and agreed that partial payments may be made for the mutual convenience of the Commission and Contractor but shall not be construed as the Commission's acceptance of a part or portion of the work.

Article 5: RECORDS

The Contractor will maintain proper records for review by the Commission.

Article 6: Date of Completion

The Contractor agrees that all work to be performed under the contract shall be completed on or before October 31, 2016.

Article 7: PREVAILING PARTY—ATTORNEY FEES

Notwithstanding any terms or conditions in this Contract to the contrary, in the event litigation is commenced to enforce any term or condition of this Contract, the prevailing party shall be entitled to costs and expenses of litigation including a reasonable attorney fee.

Article 8: ENGAGING IN ACTIVITIES WITH IRAN

By signing this Contract, Contractor certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5

Article 9: E-VERIFY

Contractor shall comply with E-Verify Program as follows:

- a. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program ("Program"). **Contractor** is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.
- b. **Contractor** and its subcontractors shall not knowingly employ or contract with any unauthorized alien or retain any employee or contract with a person that Contractor or its subcontractors subsequently learns is an unauthorized alien. If Contractor violates this section 7(b), the Commission shall require Contractor to remedy the violation not later than thirty (30) days after the Commission notifies **Contractor**. If the Contractor fails to remedy the violation within thirty (30) day period, the Commission shall terminate the contract for breach of contract. If the Commission terminates the contract, Contractor shall, in addition to any other contractual remedies, be liable to the Commission for actual damages. There is a rebuttal presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status for the employment through the Program.
- c. If Contractor employs or contracts with an unauthorized alien but the Commission determines that terminating the contract would be detrimental to the public interest or public property, the Commission may allow the contract to remain in effect until the Commission procures a new contractor.
- d. **Contractor** shall, prior to performing any work, require each subcontractor to certify to **Contractor** that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Contractor determines that a subcontractor is in violation of this Section 7(d), **Contractor** may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by Contractor or the subcontractor.
- e. By its signature below, Contractor swears or affirms that it i) has enrolled and is participating in the E-Verify program, ii) has provided documentation to the Commission that it has enrolled and is participating in the E-Verify program, and iii) does not knowingly employ an unauthorized alien.

Article 10: NON-DISCRIMINATION

Contractor agrees:

- a. That in the hiring of employees for the performance of the work under this contract or any subcontract hereunder, no contractor, or subcontractor, nor any person action on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;
- b. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;
- c. That the Commission may deduct from the amount payable to the contractor a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against for intimidated in violation of the provisions of the contract;
- d. If there is a second or any subsequent violation of the terms or conditions of this section, then this contract may be cancelled or terminated by Commission and all money due or to become due hereunder will be forfeited.

Article 11: LIQUIDATED DAMAGES

The Contractor and Commission recognize that time is of the essence of this Agreement and that the Commission will suffer financial loss if the Work is not completed within the times specified in Article 6 above. The parties also recognize the delays, expense, and difficulties involved in a legal or arbitration proceeding and the actual loss suffered by the Commission if the Work is not completed on time. Accordingly, instead of requiring and such proof, Commission and Contractor agree that as liquidated damages for delay (but not as a penalty), the Commission, in the form of a Change Order, shall deduct from the monies due to the Contractor \$500.00 for each calendar day that expires after the time for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension therefore granted by the Commission, the Commission, in the form of Change Order, shall deduct from the monies due the Contractor \$500.00 for each calendar day that expires after the time specified in Article 6 for the completion and readiness for final payment until the Work is completed and ready for final payment.

Article 12: INSURANCE

The **CONTRACTOR** shall at its own expense maintain in effect during the term of this contract the following insurance with limits as shown or greater:

General liability (included automobile)—combined single limit of \$1,000,000.00;

Workers' Compensation—statutory limit; and

Professional Liability for protection against claims arising out of performance of professional services caused by negligent error, omission, or act in the amount of \$1,000,000.00.

The **CONTRACTOR** shall provide Certificates of Insurance indicating the aforesaid coverage upon request of the **COMMISSION**.

IN WITNESS WHEREOF we have set our hands the day and year first about written.

CONTRACTOR:
DEATON ENTERPRISES, INC.

CITY OF WEST LAFAYETTE
REDEVELOPMENT COMMISSION

by: _____
Name, Title

Lawrence T. Oates, President

Johari Miller-Wilson, Secretary